



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Pat nt Examining Op rations**

Applicant(s): McIntosh et al

Serial No: 10/067,121

Art Unit: 1644

Filed: 13 November 2001

Examiner: Belyavskyi, M. A.

TITLE: MESENCHYMAL STEM CELLS FOR PREVENTION AND TREATMENT  
OF IMMUNE RESPONSES IN TRANSPLANTATION

Docket No.: 640100-441

20 November 2003

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**ELECTION OF INVENTION AND SPECIES**

Sir:

In response to the Office Action, dated 21 October 2003, and a telephone interview with the Examiner, Applicant responds by electing the invention of Group II (claims 71, 96, and 98-115) drawn to a process for treating a transplant recipient to reduce in said recipient an immune response of effector cells against a xenoantigen, comprising administering to the recipient mesenchymal stem cells, wherein the T cells are from the recipient and the xenoantigen is from the donor. In addition, Applicants elect as species the solid tissue heart, as recited in claim 109.

Applicants make this Group election with traverse for the following reasons.

First, claim 71, as recited in the present application, is the counterpart of claim 1 in the parent application, of which the present application is a divisional, and which has now issued as U.S. Patent No. 6,328,960. A comparison of claim 71 of the present application and claim 1 of the '960 shows that claim 1 of the '960 is directed to an alloantigen whereas the present claim 71 is directed to a xenoantigen. The other claims are similar. Thus, Applicant urges that since the claims were examined in the parent case without further division, these claims should not now be divided. If alloantigen was searchable as such in the issued patent then xenoantigen should be searchable here without further restriction.

Consequently, claims of Groups I and II should be examined together.

In addition, Applicant believes that it is inappropriate, for the same reasons, to restrict claims 116-117 as separate Group IV. These claims are counterparts of claims 21 and 22 of the '960 patent, except for the recitation of a xenoantigen in place of an alloantigen.

In sum, Applicant believes that if all of these claims could be examined and allowed to issue as part of the same patent where alloantigen was recited then the same should be true of similar claims that recite xenoantigen in place of alloantigen. In addition, Applicant notes that, while claim 109 has been delineated as reciting separate solid organs, it is a counterpart of claim 14 of the issued '960 patent, which recites the same species.

Consequently, Applicants respectfully request that the claims of Groups I, II and IV be rejoined and examined together with respect to xenoantigen in the same way as was done for alloantigen of the parent issued patent and without further restriction.

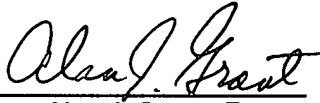
Serial No. 10/067,121  
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Applicants believe that no fee is due in filing this response. Applicants request that the Commissioner charge any additional fee for this response, or credit any overpayment, to Deposit Acct. No. 03-0678.

**FIRST CLASS CERTIFICATE**

I hereby certify that this correspondence is being deposited today with the U.S. Postal Service as First Class Mail in an envelope addressed to:

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

  
Alan J. Grant, Esq.      11/20/03  
Date

Respectfully submitted,



Alan J. Grant, Esq.  
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**TRANSMITTAL**

Sir:

In response to the Office Action dated 21 October 2003, Applicants herewith submit the following:

1. Election of Invention;
2. Return Postcard.

No fee is believed due in filing these papers. If any fee is due, Applicant authorizes the Commissioner to charge such fees to Deposit Account No. 03-0678.



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